

REPLY BY THE SEATTLE DISPLACEMENT COALITION AND THE INTERFAITH TASK FORCE ON HOMELESSNESS TO THE SEPTEMBER 21ST BRIEFS FILED BY CHILDREN'S HOSPITAL AND THE CITY OF SEATTLE'S DEPARTMENT OF PLANNING AND DEVELOPMENT, BOTH RESPONDING TO OUR APPEAL IN THE MATTER OF THE APPLICATION OF SEATTLE CHILDREN'S HOSPITAL FOR APPROVAL OF A MAJOR INSTITUTION MASTER PLAN CF 308884

To: City Clerk and
To: Seattle City Council

September 28, 2009

This is the Reply by the Displacement Coalition and the Interfaith Task Force on Homelessness to the Department of Planning and Development's (DPD) and Children's Hospital (CH) Responses dated September 21st to our appeal of the Hearing's Examiner's decision. (See DPD comments contained on pages 16-18 of their September 21st Response and pages 25-27 of CH's September 21st Response).

In particular, we emphasize that all of their words and rationalizations cannot change the obvious fact that Children's does not come anywhere near fulfilling the comparable housing replacement requirement under the Code. Instead, the City will be directly subsidizing with public dollars Children's obligation to provide comparable replacement housing.

The Code requires that an institution must assume full responsibility for ensuring comparable replacement housing for the residential units they remove. The code reads as follows and per Examiner Finding 105:

"Major institutions may **not** expand their boundaries if the expansion would result in demolition of residential structures 'unless comparable replacement is proposed to maintain the housing stock of the city.'" SMC 23.24.124 B.7 [bold added]

Both CH and DPD contend that a contribution of \$5 million doled out for "comparable replacement housing" is adequate to ensure replacement of the 136 residential units that will be removed at Laurelon Terrace by Children's. Yet the Record shows that full replacement costs anywhere from \$31.2 million (at \$230,000 per unit) to \$36.7 million (at \$270,000 per unit). See Exhibits 101; R-13 at 2-3; and R-19.

DPD and CH do not really disagree with these documented costs. Instead, they claim that, for purposes of CH's replacement housing obligation, \$5 million equals \$30 million. They arrive at this conclusion by a concept not found in the Code, "gap financing." The idea is that if publicly sponsored housing projects costing \$30 million are \$5 million short, then Children's can contribute the \$5 million and get credit for the contribution. This sounds ok – until it is realized how much credit Children's will get.

For example, under the scheme agreed upon between the Executive and Children's, Children's will contribute \$600,000.00 to the Solid Ground project at Magnuson Park. This is equivalent to the replacement cost of just a few of the 136 units it will demolish at Laurelon Terrace. But, Children's will get replacement credit as if it were responsible for building all 52 of Solid Ground's living units. The overwhelming proportion of the cost will be paid by various public sources including scarce City (taxpayer) dollars.

CH and DPD claim that the Major Institutions Code does not require a formulaic approach for calculation of Children's replacement housing obligation and that it should be left solely to the discretion of the City's Office of Housing (OH) to determine how much CH should pay in order to meet its obligation to provide comparable replacement of 136 units of housing. However, the Code does not give the Executive's Office of Housing such a controlling role. And, if it did, the Council would still have to ask in its role here as judges whether the deal OH has struck with Children's complies with the Code – or even common business sense.

The OH notion, accepted by DPD, of “gap financing” as fulfilling the Code comparable replacement requirement, is not mentioned in the Code. OH and DPD have conceded, in defending “gap financing”, that they do not operate by any specific ratios or formulas. They say that none are necessary to determine CH's (or any other institution's) per unit replacement obligation.

Here, the only explanation in the Record for how it was decided that Children's \$600,000.00 contribution would get it credit for Solid Ground's 52 units is that Solid Ground needed \$600,000.00 to bridge a financing gap. What if Solid Ground had only needed \$200,000.00? Or, on the other hand \$2 million dollars? There are no rules, no ratios, no principles. OH has set up a bazaar in which “let's make a deal” is the operative principle and politically potent major institutions are welcome to bargain with the Executive.

However well-meaning OH may be, this standard-free approach effectively defeats the purpose of the Code comparable replacement requirement. That requirement holds the developer/institution, here CH, solely responsible for the full cost of replacing the 136 units it will demolish. Children's Response calls this interpretation, that it must take full responsibility for replacement, “ludicrous.” However, what could be more ludicrous than the deal it has struck with the Executive in which taxpayers end up as the actual financiers of a Major Institution's housing demolition?

The Seattle Displacement Coalition has had input and been instrumental in shaping virtually every policy now in place at City Hall over the last 30 years addressing the loss of our existing low income stock due to private and public sponsored redevelopment. This includes the current set of conditions addressing housing loss when institutions expand under terms of the major institutions plan ordinance. Because we were directly involved

and participated in hearings and Council discussions when this policy was adopted, we gave testimony before the Hearing Examiner in the CH matter stating for the record that there was not even talk of OH's notion of "gap financing" or giving OH the authority to make deals setting the institution's per unit replacement contribution.

Our organization also has been directly involved in development of the comparable replacement language contained in other City resolutions and laws mandating comparable housing replacement (such as SHA HOPE VI requirements, the new incentive zoning ordinance, U of W expansion, and the multi-family tax exemption (MFTE) program). If the Council decides in this appeal that the Code allows OH unrestrained authority to make the kind of deal it made here, the precedent risks eroding the intent and meaning of housing replacement language in these other laws as well.

Again, in this case, CH is being held responsible for covering only \$5 million of housing replacement costs that are actually on the order of \$31.2 million to \$36.7 million. At a cost conservatively of \$230,000 per unit (a minimum per unit cost according to testimony on the record), that effectively means CH accounts for replacement of only 21.7 of the 136 units it is demolishing to expand its boundaries. The taxpayers are effectively left to pick up the tab for replacement of the rest or if they don't it means a net loss of about 114 units of housing. If this concept in fact is applied when housing is removed under MFTE, Incentive zoning, U of W expansion etc, it will cost taxpayers millions in City funds to replace housing developers remove -- or we risk losing hundreds of low income housing units in our city to this redevelopment. This was never the intent of comparable replacement requirements in the major institutions code and all these other ordinances.

In addition, as explained in detail in our August 25th Appeal, even if one accepted the notion of "gap financing" offered by the Office of Housing, \$12,376,000-- not \$5 million - - is the minimum amount Children's must pay if it is to actually fill the full financing gap. This larger amount is the real gap which must be made up by funding from all government sources (not just the city's contribution) if we are to relieve the taxpayer of any responsibility or obligation towards creation of these 136 replacement units.

For proof of this, per the data in Exhibit R-19, each of the 1814 units created under the current levy program since 2002, contributions from all government sources on average accounted for 41% of the cost of each of those units. The per unit cost to build each of those units averaged \$221,609 per unit. Government's contribution at 41% of that is \$91,000. Therefore, if the notion is to be accepted at all that comparable replacement - which costs at least (and in the case of Laurelon Terrace more than) \$221,609 per unit -- can be satisfied by "gap financing", then Children's must be held accountable for the actual "gap", replacing the full amount that government on average would pay. Multiplying the 136 units Children's would demolish by \$91,000 (approximately 41% of the \$221,609 per unit cost) equals \$12,376,000.

While this is far less than the comparable replacement actually required by the Code, it is far more than the \$5 million that the Executive Office of Housing decreed to DPD would be all that Children's would have to pay as a result of its choice to demolish 136 units of housing.. Again, if the "gap" scheme – which is not found in the Code at all – is nevertheless accepted, then \$12,376,000 is the minimum amount Children's must pay if it is to actually fill the financing gap.

We would add that neither Children's nor DPD have offered a credible answer as to why what they have paid and promised to current Laurelon Terrace owners for purchase of their units should be counted as an offset against the CH obligation to provide comparable replacement housing. The Record is clear that none of the money paid, some to absentee owners, is earmarked for replacement housing, even for unit owners themselves, in the City. These are site acquisition costs – not housing replacement costs. They should no more be credited for housing replacement than would be the undoubtedly substantial cost to CH of demolishing the 136 units of housing it is buying.

Taxpayer dollars for housing are a precious commodity. Housing is a fundamental need and right just as much as healthcare. Taxpayer/government housing funds should be used wisely and transparently and for housing purposes and not to subsidize a hospital project, however beneficial. The CH/OH proposal depends on applying the Major Institutions Code in a manner that would negate its intent and turn taxpayer housing funds into underwriters of the Children's expansion.

In conclusion, the Council should uphold the Examiner's strong denial recommendation: if the Council does so Children's may well make a better choice than to insist on a plan that demolishes 136 units of housing.

If the Council determines not to uphold the Hearing Examiner's denial, then the Council should uphold this appeal of the Hearing Examiner's interpretation of the comparable replacement housing requirement. That interpretation is in conflict with the underlying intent of the Code, is not supported by the subsequent history and adoption of replacement language now contained elsewhere in city law, and would set a dangerous precedent undermining the Code's housing replacement requirements and turning them into vehicles for city-subsidies of private projects. Children's should therefore be held to the full replacement of comparable housing as required by the Code.

To accomplish this (again, in the event that the Council does not uphold the Examiner's well-reasoned denial recommendation) the Council should adopt modified conditions including ones as described below and as stated in our August 25th appeal:

- Children's should be held responsible for full replacement of 136 units. To meet that 100 percent obligation, Children's must:

1) make an in-lieu payment to the City equal to the full replacement cost of the housing it will demolish. At \$221,609 per unit (again the average cost per unit for housing built under the City's levy program) times 136, this amount is \$30,138,824; OR

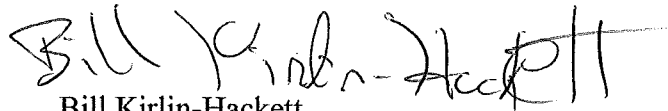
2) in the alternative, partner with a non-profit housing developer and itself provide full (\$30,138,824) funding for construction of replacement housing.

- If the Council accepts the notion of "gap financing", Children's must itself pay 100 percent of the actual 41% gap otherwise filled by government funds, here \$12,376,000 (136 units times \$91,000). That amount should be paid to the City in the form of a cash contribution to be used for low income and affordable housing developments. No reduction or offset should be allowed for development site acquisition or relocation costs.

Respectfully submitted,



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Before the City Council, City of Seattle

Matter of the application of Seattle Children's Hospital For approval of a Major Institution's Master Plan

CF 308884 - Certificate of Service

I certify that on the 28th Day of Sept. 2009 I sent copies of the following documents:

1. Reply by the Displacement Coalition and the Interfaith Task Force on Homelessness to the Department of Planning and Development's (DPD) and Children's Hospital (CH) Responses dated September 21st to our appeal of the Hearing's Examiner's decision and,

2. Certificate of Service

To the following parties by email address below for that party:

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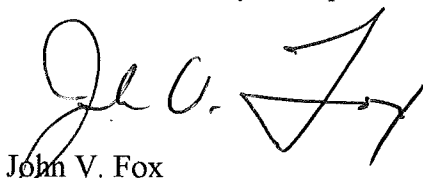
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dates this 28th Day of September 2009 at Seattle Washington



John V. Fox

For Seattle Displacement Coalition and the Interfaith Task Force on Homelessness